

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

MATTHEW BARNETT,

Respondent,

v.

MELVIN D. DAVIS, Husband, and MARY K. DAVIS, Wife,

Appellants.

DOCKET NUMBER WD72138

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: March 22, 2011

APPEAL FROM

The Circuit Court of Andrew County, Missouri
The Honorable Daniel F. Kellogg, Judge

JUDGES

Division II: Mitchell, P.J., and Ellis and Howard, JJ.

CONCURRING.

ATTORNEYS

Larry D. Goins
St. Joseph, MO

Attorney for Respondent,

Daniel L. Radke
St. Joseph, MO

Attorney for Appellants.



MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

MATTHEW BARNETT,

Respondent,

v.

MELVIN D. DAVIS, Husband, and MARY
K. DAVIS, Wife,

Appellants.

OPINION FILED:
March 22, 2011

WD72138

Andrew County

Before Division Two Judges:

Karen King Mitchell, Presiding Judge, and
Joseph M. Ellis and Victor C. Howard, Judges

Melvin D. Davis and Mary K. Davis ("the Davises") appeal the Circuit Court of Andrew County, Missouri's ("trial court") entry of summary judgment in favor of Matthew Barnett ("Barnett"). The judgment ordered Andrew County Title and Abstracts, Inc. ("Title Company") to return to Barnett earnest money in the amount of \$15,400 that had been provided in connection with a contract for sale of real property.

REVERSED AND REMANDED WITH DIRECTIONS.

DIVISION TWO HOLDS:

In this case, the real estate contract required the Davises to deliver to Barnett a general warranty deed for the property before Barnett was required to pay the remainder of the purchase price. The Davises' failure to appear at the designated time of closing, therefore, constitutes a breach on their part. Barnett did not establish, however, that the Davises' breach was material. The Davises' breach did not make it significantly less likely that Barnett would receive his benefits under the contract; the Davises, as the breaching party, had much to lose by not performing at closing; and there was a strong likelihood that the Davises would cure their breach. Barnett knew that the Davises were anxious to sell their property and if he had entered Title Company's office, Cliff Black, as an agent of the Davises, would have called the Davises, who were only two minutes away, to come complete the closing. Because Barnett did not establish

that the Davises' breach was material, the trial court erred in granting summary judgment in his favor.

OPINION BY: Karen King Mitchell, Presiding Judge

March 22, 2011

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